

ARKANSAS SUPREME COURT

No. 06-1167

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered February 8, 2007

EDWARD JOE HOOTEN
Petitioner

v.

GARY COTTRELL, CIRCUIT JUDGE
Respondent

PRO SE MOTION FOR
RECONSIDERATION OF MOTION
FOR LEAVE TO PROCEED *IN FORMA*
PAUPERIS [CIRCUIT COURT OF
CRAWFORD COUNTY, CV 2005-
395(I)]

MOTION FOR RECONSIDERATION
DENIED.

PER CURIAM

Petitioner Edward Joe Hooten, who is incarcerated in the Arkansas Department of Correction and proceeding *pro se*, filed a civil complaint for breach of contract in the Circuit Court of Crawford County on August 11, 2005, against Argyle Dale Hooten, Jr. On August 2, 2006, petitioner tendered to this court a *pro se* petition for writ of mandamus, seeking a writ to compel Gary R. Cottrell, the circuit judge in whose court the complaint was pending, to hold a hearing on the complaint. Petitioner was duly advised by one of our staff attorneys of the need to submit a certified partial record of the proceedings in the lower court with the filing fee required to file a petition for writ of mandamus here.

On October 11, 2006, petitioner submitted the partial record but not the filing fee. He then filed a motion asking to be permitted to file the mandamus action without paying a filing fee.

Appended to the motion was petitioner's affidavit of indigency. As grounds for the motion to proceed *in forma pauperis*, petitioner alleged that he was unable to pay the fee, that he was entitled to the writ, and that the mandamus petition was not brought for a frivolous or malicious purpose. Finding that it is well settled that where no fundamental right is involved, filing fees do not violate due process and that petitioner had failed to establish that a fundamental right was involved, we denied the motion. *Hooten v. Cotrell*, 06-1167 (Ark. Jan. 4, 2007) (*per curiam*). Petitioner, who was directed to submit the fee to file the mandamus petition within thirty days, now seeks reconsideration of the motion to proceed *in forma pauperis*.

Petitioner asserts that he has been indigent since his incarceration began some three years ago and that the respondent to the mandamus action has declined to set a hearing in his civil case until petitioner is released from prison. He contends that respondent's action has caused an unreasonable delay in the case in which petitioner stands to lose twenty-five per cent of a rightful inheritance. Finally, he states that he has a fundamental right to access to the court without unreasonable delay.

Rule 72 of the Arkansas Rules of Civil Procedure conditions the right to proceed *in forma pauperis* on, among other things, the court's satisfaction that the alleged facts indicate a colorable cause of action. *Boles v. Huckabee*, 340 Ark. 410, 12 S.W.3d 201 (2000) (*per curiam*). A colorable cause of action is a claim that is legitimate and may reasonably be asserted given the facts presented and the current law or a reasonable and logical extension or modification of it. *Id.* at 412, 12 S.W.3d 202-203. Where no fundamental right is involved, filing fees do not violate due process. *Partin v. Bar of Arkansas*, 320 Ark. 37, 894 S.W.2d 906 (1995). Because petitioner's assertion of prejudice, which is not substantiated by facts, is insufficient to establish that petitioner has a colorable cause of action with respect to either the petition for writ of mandamus or the underlying civil suit, the

motion for reconsideration of the motion to proceed *in forma pauperis* is denied.

When petitioner's original motion to proceed *in forma pauperis* was denied on January 4, 2007, he was allowed until February 5, 2007, to submit the fee to file the mandamus petition. The time to submit the fee is extended to ten days from the date of this opinion.

Motion for reconsideration denied.